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**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

Chapter 11

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

Affects:

- ☐ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☒ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC

**USA CAPITAL REALTY
 ADVISORS, LLC'S FINAL REPORT
 OF ACTION TAKEN AND
 PROGRESS TOWARDS
 CONSUMMATION OF
 CONFIRMED PLAN OF
 REORGANIZATION**

**(Affects USA Capital Realty Advisors,
 LLC)**

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USA Capital Realty Advisors, LLC (“USA Realty”), by and through its counsel, hereby submits this Final Report of Action Taken and Progress Towards Consummation of Confirmed Plan of Reorganization (“Final Report”). This Final Report is submitted pursuant to Article VIII, Section U of the Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization (the “Plan”), Paragraph 75 of the Court’s “Order Confirming the Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization,” as Modified Herein” (Docket No. 2376) (the “Confirmation Order”), and the Court’s Order dated April 30, 2007 (Docket No. 3627). The Plan became effective on March 12, 2007 (the “Effective Date”). USA Realty filed its First Report of Action Taken and Progress Towards Consummation of Confirmed Plan of Reorganization (“First Report”) on July 16, 2007, covering the period of March 13, 2007, through June 30, 2007 (Docket No. 4177). It filed its Second Report of Action Taken and Progress Towards Consummation of Confirmed Plan of Reorganization (“Second Report”) on October 25, 2007, covering the period of July 1, 2007, through September 30, 2007 (Docket No. 5088). It filed its Third Report of Action Taken and Progress Towards Consummation of Confirmed Plan of Reorganization (“Third Report”) on April 18, 2008, covering the period of October 1, 2007, through March 31, 2008 (Docket No. 6218). The First, Second, and Third Reports (collectively, the “Reports”) are each incorporated herein by reference, as is USA Realty’s Motion to Close Case and Request for Final Decree (“Motion to Close”) and the Declaration of Susan M. Smith in Support of the Motion to Close (“Smith Declaration”) filed contemporaneously herewith.¹

I. Summary of Resolution of Proofs of Claim Filed Against USA Realty

As discussed in the Reports, USA Realty has now resolved all proofs of claim filed against it. As of the Effective Date, 67 proofs of claim had been filed against USA Realty. Each of these claims has been resolved as follows:

- a. On October 26, 2006, the Court entered an Order disallowing claim number 10726-00017 (Docket No. 1674).

¹ Unless otherwise provided herein, all capitalized words and terms are defined in the confirmed Plan.

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b. On March 8, 2007, USA Realty filed its Omnibus Objection to Certain Claims (Docket No. 3017) and its Omnibus Objection to Misfiled Claims (Docket No. 3019) objecting to most of the claims filed against it. The Court sustained in part the Omnibus Objection to Certain Claims (Docket No. 3733) and sustained in full the Omnibus Objection to Misfiled Claims whereby certain claims were reclassified as timely filed proofs of claim against USACM (Docket No. 3734).

c. On June 8, 2007, USA Realty and various claimants known throughout this proceeding as the Kantor Claimants entered into a stipulation whereby the Kantor Claimants agreed to withdraw their claims against USA Realty (Docket No. 3922). The Court approved this stipulation by an order dated the same day (Docket No. 3929).

d. USA Realty stipulated with the Internal Revenue Service to allow its claim (10726-00045) as a \$1,000 unsecured non-priority claim (the "IRS Claim"), which stipulation the Court approved by Order dated June 12, 2007 (Docket No. 3957).

e. On June 29, 2007, USA Realty filed objections to the claims filed by the Pension Benefit Guaranty Corporation (the "PBGC") (claims number 10729-00024, 10729-00025, and 10729-00026). USA Realty disputed the amounts of the PBGC's claims and asserted that the PBGC would receive a double recovery on account of its claims if the claims were allowed in any amount against USA Realty. Thereafter, USA Realty was provided with additional information from prior management that demonstrated that USA Realty was in fact not a member of the USACM "controlled group," and, therefore, had no liability on account of the PBGC's claims. USA Realty presented this information to the PBGC, and based thereon the PBGC agreed by stipulation to withdraw its claims against USA Realty with prejudice (Docket No. 4939). The Court approved the stipulation by Order dated October 11, 2007 (Docket No. 4970).

f. USA Realty also objected to claims number 10729-00041 through 10729-00044 and 10729-00054 through 10729-00057 (known as the "McGimsey

Claims”). On November 2, 2007, USA Realty filed a summary judgment motion asserting that the McGimsey Claims were unauthorized derivative actions and should be disallowed in their entirety (Docket No. 5256). No response to the summary judgment motion was filed, and the Court granted judgment in favor of USA Realty at a hearing on December 20, 2007. By Order dated January 22, 2008 (Docket No. 5710), the McGimsey Claims have been disallowed in their entirety.

g. USA Realty did not object to claim number 10726-00030 filed by the Pension Real Estate Association as an unsecured non-priority claim in the amount of \$2,585 (the “PREA Claim”) due to the fact that USA Realty had already listed this claim on its Schedules.

Thus, the only two proofs of claim that are allowed against USA Realty are the PREA Claim and the IRS Claim. As discussed in greater detail in section IV below, both of these claims has been paid in full. Therefore, all proofs of claim filed against USA Realty have been resolved.

II. Resolution of Scheduled Claims

On June 15, 2006, USA Realty filed its Schedules listing eight unsecured non-priority claims totaling \$125,224.15 (Docket No. 673). On June 8, 2007, USA Realty filed an omnibus objection to the scheduled claims of Beadle McBride, Kummer Kaempfer Bonner Renshaw & Ferrario, and Santoro Driggs asserting that USA Realty was no longer liable on account of these claims since the parties had affirmatively sought payment of their claims from other Debtors (Docket No. 3919). By Order dated July 31, 2007, the Court sustained USA Realty’s objection thereby disallowing the scheduled claims of Beadle McBride, Kummer Kaempfer Bonner Renshaw & Ferrario, and Santoro Driggs in their entirety (Docket No 4386).

The remaining claims listed on USA Realty’s Schedules are those of Intershow (\$9,795), PREA (which has been superseded by the PREA Claim discussed above), RR Donnelley Receivables Inc. (\$160), Transfer Solutions (\$2,508.42), and USACM (\$40,277) (the “USACM Scheduled Claim”). As discussed in greater detail in section IV below, the USACM Liquidating Trust (“USACM Trust”) has waived all right to payment on account of the USACM Scheduled Claim as part of its settlement with the Reorganized DTDF (as defined below), and the remaining

1 scheduled claims have been paid in full. Thus, all issues involving USA Realty's scheduled
2 claims have now been resolved.

3 **III. Resolution of Motions, Contested Matters, and Adversary Proceedings**

4 USA Realty has been involved in various motions, contested matters, and/or adversary
5 proceedings since the Effective Date all of which have now been resolved as follows:

6 1. Matters before this Court. There were two matters still pending before this Court
7 involving USA Realty as of the Effective Date: (A) the USA Realty Professionals' final fee
8 applications, and (B) a "conditional" adversary proceeding which was filed by Compass against,
9 in relevant part, all of the Debtors on July 7, 2007, designated as Adversary Proceeding No. 07-
10 01105 (the "Compass Proceeding").

11 a. Final Fee Applications. A hearing on the USA Realty Professionals' Final
12 Fee Applications was held on August 7, 2007, and all matters related to those Applications
13 were concluded at that time. The Court granted the USA Realty Professionals' Fee
14 Application by Orders dated August 15, 2007, (Docket Nos. 4505 and 4506) and August 16,
15 2007 (Docket No. 4570). The Court also authorized USA Realty to make distributions to
16 the USA Realty Professionals from the Ordered Expense Reserve, which distributions have
17 been made. Therefore, there are no remaining issues with regards to the USA Realty
18 Professionals' Final Fee Applications.

19 b. Compass Proceeding. On October 26, 2007, Compass filed a notice of
20 dismissal thereby dismissing USA Realty from the Compass Proceeding. Therefore, this
21 issue has been resolved with respect to USA Realty.

22 2. Matters before the District Court. In addition to the limited matters before this
23 Court, USA Realty was a party to three appeals of the Confirmation Order before the United
24 States District Court for the District of Nevada ("District Court"). These appeals, however, have
25 either been dismissed in their entirety or USA Realty has been dismissed as a party.

26 a. USA Investment Partners, LLC and several others filed an appeal from the
27 Confirmation Order, ultimately designated as District Court No. 07-00138. Pursuant
28 to USA Realty's motion to dismiss, this appeal has been dismissed with prejudice by

the District Court, and the District Court's Order is now final.

b. Debt Acquisition Company of America V, LLC ("DACA"), also filed an appeal from the Confirmation Order, ultimately designated as District Court No. 07-00160. USA Realty filed two motions to dismiss this appeal, and fully briefed the appeal. Just prior to oral argument before the District Court, DACA and USA Realty entered into a stipulation to dismiss USA Realty from the appeal. The District Court approved this stipulation by Order dated July 12, 2007. Thus, USA Realty is no longer a party to this appeal.²

c. Finally, the so-called "Lenders Protection Group" and the Jones Vargas Direct Lenders, filed an appeal from the Confirmation Order, ultimately designated as District Court No. 07-00072. USA Realty, along with the other Debtors, successfully obtained an Order of the District Court vacating a stay pending appeal that had been entered by the Bankruptcy Appellate Panel, it filed two motions to dismiss the appeal, and fully briefed the appeal. Just prior to oral argument before the District Court, the Appellants and USA Realty entered into a stipulation to dismiss USA Realty from the appeal, and on July 11, 2007, the District Court entered an Order approving that stipulation. Thus, USA Realty is no longer a party to this appeal.³

IV. Resolution of the USA Realty Post-Petition Management Fees Issue

As of the Confirmation of the Plan, certain disputes between USACM and DTDF were left unresolved with the expectation that the parties would work towards the eventual resolution of these issues. *See* Disclosure Statement at pp. 73-74. Included among these unresolved issues was the "payment, waiver, refund, or other treatment" of post-petition management fees purportedly

² On August 29, 2007, the District Court issued its Opinion and Order dismissing this appeal as moot with respect to all Debtors. DACA has appealed the District Court's Order to the Ninth Circuit Court of Appeals. As USA Realty has already been dismissed from the appeal, DACA's appeal to the Ninth Circuit has no effect on the USA Realty estate.

³ On August 29, 2007, the District Court issued its Opinion and Order dismissing this appeal as moot with respect to all Debtors. No appeal was taken from this Order and it is now final.

1 owed by DTDF to USACM through USA Realty. *See* Plan at § IV.E.5.c. This issue was to be
2 resolved as “mutually agreed upon” by the USACM Trust and the Post-Effective Date USA
3 Capital Diversified Trust Deed Fund, LLC (“Reorganized DTDF”). *See id.* These post-petition
4 management fees were the only remaining assets in the USA Realty estate as of the filing of the
5 Third Report.

6 After extensive negotiations, the USACM Trust and the Reorganized DTDF reached a
7 resolution of the claims between them, including USACM's direct or indirect claim against the
8 Reorganized DTDF to any or all of the post-petition management fees owed by the Reorganized
9 DTDF to USA Realty. This settlement (the “USACM Trust/Reorganized DTDF Settlement”) was
10 included in the “Motion to Approve Settlement Agreement with USA Capital Diversified Trust
11 Deed Fund, LLC with Certificate of Service” filed on March 13, 2008 (Docket No. 5979) and
12 approved by the Court by Order dated April 1, 2008 (Docket No. 6091).

13 The only remaining assets in USA Realty available to pay the remaining administrative,
14 priority and unsecured claims against USA Realty were the unpaid post-petition management fees
15 owed by the Reorganized DTDF to USA Realty and an equity interest in DTDF. This being the
16 case, USA Realty confirmed with the USACM Trust that the USACM Trust/Reorganized DTDF
17 Settlement resolved all claims the USACM Trust would have against USA Realty that might be
18 payable from monies recovered from Reorganized DTDF. Consequently, the Reorganized DTDF
19 and USA Realty agreed that a payment by the Reorganized DTDF of the amount necessary to pay
20 all remaining administrative, priority and unsecured claims allowed or scheduled in the USA
21 Realty case (except for the USACM Scheduled Claim) would be in full satisfaction of the claim
22 USA Realty had against the Reorganized DTDF for unpaid post-petition management fees and for
23 any distribution that would be made on account of the DTDF interest. The payment from the
24 Reorganized DTDF has been made, and all administrative, priority and unsecured claims allowed
25 or scheduled in the USA Realty case (except for the USACM Scheduled Claim) have been paid as
26 follows:

<u>Claimant</u>	<u>Allowed Amount of Claim</u>	<u>Payment</u>
<u>Administrative Expenses⁴</u>		
Mesirow Financial	N/A	\$8,544.00
Ray Quinney & Nebeker	N/A	\$15,000.00
Schwartzter & McPherson	N/A	\$10,353.00
LeAnn Weese	N/A	\$2,950.00
U.S. Trustee – 2 nd Quarter	N/A	\$325.00
U.S. Trustee – 3 rd Quarter ⁵	N/A	\$325.00
Miscellaneous (Bank fees, etc.)	N/A	\$930.00
<u>Proofs of Claim</u>		
Internal Revenue Service	\$1,000.00	\$1,000.00
Pension Real Estate Assoc.	\$2,585.00	\$2,585.00
<u>Scheduled Claims</u>		
Intershow	\$9,795.00	\$9,795.00
RR Donnelley Receivables Inc	\$160.00	\$160.00
Transfer Solutions	\$2,508.42	\$2,508.42
Total Distributed		\$54,150
Percentage Paid on Account of Unsecured Claims		100%

Thus, the post-petition management fee issue has now been resolved and all allowed claims against USA Realty have been paid in full, except the U.S. Trustee's 3rd Quarter fee of \$325, which will be paid within 10 days after the Court grants the Motion to Close.

⁴ These expenses are comprised of post-Effective Date expenses that remain unpaid.

⁵ Based on the distributions made since July 1, 2008, which are the final distributions to be made in the USA Realty case, the U.S. Trustee's fee for the third quarter of 2008 is \$325. This will be paid out of the funds distributed to Ray Quinney & Nebeker within 10 days after the Court grants the Motion to Close.

On July 29, 2008, and pursuant to Art. VIII, Section L.3 of the Plan and § 71 of the Confirmation Order, USA Realty filed a certificate of dissolution with the Nevada Secretary of State. On July 30, 2008, USA Realty was officially dissolved with the State of Nevada. *See* Smith Declaration. Concurrently herewith, USA Realty has filed the Motion to Close seeking an Order finding that its estate has been “fully administered” and closing its bankruptcy case, and issuing a final decree.

Respectfully submitted this 13th day of August, 2008.

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